



# Public Legal Interpretation No. 5 of 2008

## *Access to and disclosure of 'AUSTRAC information'*

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### **Currency**

This Public Legal Interpretation replaces PLI 5 of 15 August 2008, which has been withdrawn.

The views on the subject matter set out in this Public Legal Interpretation are the views of AUSTRAC at September 2015.

You should ensure that this Public Legal Interpretation has not been superseded or withdrawn.

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## Objective

- 1 The purpose of this Public Legal Interpretation is to set out AUSTRAC's views on the provisions of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (**AML/CTF Act**) as they relate to:
  - what is 'AUSTRAC information'?
  - who may access 'AUSTRAC information' and section 49 information?
  - who may disseminate AUSTRAC information and section 49 information and to whom?

## Introduction

- 2 The objects of the AML/CTF Act include fulfilling Australia's international obligations and addressing matters of concern in combating money laundering and the financing of terrorism.
- 3 Section 5 of the AML/CTF Act defines 'AUSTRAC information' which includes 'eligible collected information'. 'Eligible collected information' is defined to include 'FTR information (within the meaning of the *Financial Transaction Reports Act 1988* (**FTR Act**)).'
- 4 Part 11 of the AML/CTF Act contains secrecy and access provisions which set out the main limitations on access to and disclosure of AUSTRAC information, including limitations on producing such information to courts or tribunals.

### *Outline of Interpretation*

- 5 This Public Legal Interpretation contains:

#### Section one:

- discussion of 'AUSTRAC information', including 'eligible collected information' which includes 'FTR information'

#### Section two

- prohibition against disclosure of AUSTRAC information

#### Section 3

- disclosure of AUSTRAC information by AUSTRAC officials
- access to and disclosure of AUSTRAC information by:
  - the ATO
  - designated agencies
  - non-designated Commonwealth agencies
  - other persons
- communication of AUSTRAC information to a foreign country

- limitations on producing and disclosing AUSTRAC information to courts and tribunals
- disclosure under the *Freedom of Information Act 1982*

## Interpretation

### *Section one – AUSTRAC information*

#### **AUSTRAC information**

6 Section 5 of the AML/CTF Act defines ‘AUSTRAC information’ as follows:

**AUSTRAC information** means:

- eligible collected information; or
- a compilation by the AUSTRAC CEO of eligible collected information; or
- an analysis by the AUSTRAC CEO of eligible collected information.

7 The definition depends on two other definitions; ‘eligible collected information’ in section 5 of the AML/CTF Act and ‘FTR information’ in section 3 of the FTR Act.

8 Section 5 of the AML/CTF Act defines ‘eligible collected information’:

**eligible collected information** means:

- information obtained by the AUSTRAC CEO under:
  - this Act; or
  - any other law of the Commonwealth; or
  - a law of a State or Territory; or
- information obtained by the AUSTRAC CEO from a government body; or
- information obtained by an authorised officer under Part 13, 14 or 15;

and includes FTR information (within the meaning of the *Financial Transaction Reports Act 1988*).

9 AUSTRAC information is eligible collected information, which includes FTR information. Generally it can be said that AUSTRAC information is information collected by the AUSTRAC CEO under the AML/CTF Act and the FTR Act and any compilation or analysis of that information.

10 The AUSTRAC CEO has powers to collect information from reporting entities under the AML/CTF Act including:

- reports concerning suspicious matters (section 41);
- reports concerning threshold transactions (section 43);
- reports of international funds transfer instructions (section 45);
- written notices seeking further information on any of these reports (section 49);

- AML/CTF compliance reports (Part 3 Division 5);
- electronic funds transfer instructions (Part 5);
- other information (Parts 13,14 and 15)

11 The AUSTRAC CEO also has powers to collect information from persons under the AML/CTF Act including:

- reports about cross-border movements of physical currency (sections 53 and 55); and
- reports about movements of bearer negotiable instruments into or out of Australia (section 59);
- asking questions and seeking the production of documents (section 150);

12 In addition to information being collected using these formal information gathering powers under the AML/CTF Act, the AUSTRAC CEO also collects other information from reporting entities on a cooperative basis. The information collected will include, but will not necessarily be limited to copies of risk assessments, copies of AML/CTF programs and copies of other procedures and policies. These documents are usually collected in the context of preparing for a compliance assessment, or in processing requests such as an application for an exemption, modification or no action letter.

13 All of this information is AUSTRAC information, being eligible collected information collected by the AUSTRAC CEO for the purposes of the administration of aspects of the AML/CTF Act.

14 Compliance assessments and reports generated by AUSTRAC using the information mentioned in paragraph 12 will also be AUSTRAC information as being a compilation and/or analysis by the AUSTRAC CEO of eligible collected information.

15 Paragraph (b) of the definition of eligible collected information sets out that any information obtained by the AUSTRAC CEO from a government body will, by virtue of the inclusion of eligible collected information in the definition of AUSTRAC information, be AUSTRAC information and subject to the prohibitions on disclosure and special rules on disclosure discussed below.

16 Government body is defined in section 5 of the AML/CTF Act as:

**government body** means:

- a. the government of a country; or
- b. an agency or authority of the government of a country; or
- c. the government of part of a country; or
- d. an agency or authority of the government of part of a country.

17 It should be noted that the term 'country' is defined very broadly in section 5 as meaning Australia or a foreign country.

18 Accordingly, it is AUSTRAC's view that AUSTRAC information will include all information obtained from a government, agency or an authority of a government of a country, or part of a country, and will include all information collected from the government, an agency or authority of a State or Territory of a country including Australia.

## FTR Information

19 Section 3 of the FTR Act defines 'FTR information' as follows:

**FTR information** means information obtained by the AUSTRAC CEO under Part II and includes information included in a notice under subsection 18(8A) or 22(1) or in a copy of a record given under subsection 24(5).

20 Part II of the FTR Act permits collection of information from cash dealers including:

- reports of significant cash transactions (section 7);
- reports of transfer of currency into or out of Australia (section 15);
- reports of suspect transactions (section 16); and
- reports of international funds transfer instructions (section 17B).

21 The obligation to report these matters only applies to cash dealers who are not reporting entities under the AML/CTF Act.

22 Parts IVA and V of the FTR Act, relating to powers of inspection and enforcement respectively, also provide for the collection of information which would be regarded as FTR information.

23 AUSTRAC is of the view that the definition of AUSTRAC information is very broad and will include all information collected under the AML/CTF Act, the FTR Act and other laws of the Commonwealth, the States and Territories and will include any compilation of that information or any analysis of that information.

### *Section two – Prohibition against disclosure of AUSTRAC information under Part 11 of the AML/CTF Act*

#### **Access to and disclosure of AUSTRAC information by entrusted public officials**

24 Part 11 of the AML/CTF Act places restrictions on what the 'entrusted public officials' set out in section 121 may do with AUSTRAC information. Entrusted public officials include a person who is or was:

- a) the AUSTRAC CEO; or
- b) a member of the staff of AUSTRAC; or
- c) a person engaged as a consultant under subsection 225(1); or
- d) a person whose services are made available to the AUSTRAC CEO under subsection 225(3); or
- e) the Director of AUSTRAC; or
- f) a person engaged as a consultant under repealed section 40A of the *Financial Transaction Reports Act 1988*.

25 Subsection 121(2) provides that an entrusted public official commits an offence if the official has obtained AUSTRAC information otherwise than under Division 4 (which includes access to AUSTRAC information by designated agencies) and discloses the information to another person, unless one of the exceptions in subsection 121(3) applies.

26 Subsection 121(3) sets out the exceptions and is as follows:

- (3) Each of the following is an exception to the prohibition in subsection (2):
- (a) the disclosure is for the purposes of this Act or the *Financial Transaction Reports Act 1988*;
  - (b) the disclosure is for the purposes of the performance of the functions of the AUSTRAC CEO;
  - (c) the disclosure is otherwise in connection with the performance of the entrusted public official's duties under this Act or the *Financial Transaction Reports Act 1988*;
  - (d) the disclosure is in connection with giving another person covered by paragraph (1)(a), (b), (c) or (d) access to information for the purposes of, or in connection with:
    - (i) the performance of the functions of the AUSTRAC CEO; or
    - (ii) the performance of the other person's duties under this Act or the *Financial Transaction Reports Act 1988*;
  - (da) the disclosure is for the purposes of, or in connection with, the performance of the Integrity Commissioner's functions relating to a corruption issue (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*) relating to any law enforcement agency (within the meaning of that Act);
  - (e) the disclosure is in connection with giving access to AUSTRAC information in accordance with Division 4.

27 The AUSTRAC CEO can report back to a reporting entity following a compliance assessment without contravening the secrecy and access provisions of Part 11. As set out earlier AUSTRAC is of the view that compliance assessments are AUSTRAC information. AUSTRAC is also of the view that any compliance assessment and report back to the reporting entity concerned would be permitted by all or any of paragraphs 121(3)(a), (b) or (c) of the AML/CTF Act, in that the disclosure of the AUSTRAC information to the reporting entity is for the purposes of the AML/CTF Act and /or the performance of the functions of the AUSTRAC CEO and/or is in connection with the entrusted public official's duties under the AML/CTF Act.

## **Restrictions on use of information obtained under section 49**

28 Section 122 restricts what an entrusted investigating official may do with information obtained under section 49 of the AML/CTF Act. Information obtained under section 49 is obtained under written notice concerning information provided under sections 41, 43 or 45. That is, further information regarding reports of suspicious matters (section 41), reports of threshold transactions (section 43) and reports of international funds transfer instructions (section 45).

29 An entrusted investigating official is defined at subsection 122(1) as the Commissioner of the Australian Federal Police; the Chief Executive Officer of the Australian Crime Commission; the Commissioner of Taxation, the Chief Executive Officer of Customs, the Integrity Commissioner; or an investigating officer.

30 Section 5 of the AML/CTF Act provides that an investigating officer means a taxation officer, an AFP member, a customs officer (other than the Chief Executive Officer of Customs), an examiner of the Australian Crime Commission or a member of staff of the Australian Crime Commission.

31 Subsection 122(3) provides exceptions to the prohibition on disclosure and is as follows:  
the disclosure is for the purposes of the performance of the functions of the AUSTRAC CEO;

- (e) if the entrusted investigating official is the Commissioner of the Australian Federal Police—the disclosure is in connection with giving an AFP member access to information for the purposes of, or in connection with, the performance of the AFP member’s duties;
- (f) if the entrusted investigating official is the Chief Executive Officer of the Australian Crime Commission—the disclosure is in connection with giving:
  - (i) an examiner of the Australian Crime Commission; or
  - (ii) a member of the staff of the Australian Crime Commission;
 access to information for the purposes of, or in connection with, the performance of the examiner’s duties or the member’s duties, as the case may be;
- (g) if the entrusted investigating official is the Commissioner of Taxation—the disclosure is in connection with giving a taxation officer access to information for the purposes of, or in connection with, the performance of the taxation officer’s duties;
- (ga) if the entrusted investigating official is the Commissioner of Taxation or a taxation officer—the disclosure is:
  - (i) of information relating to a communication under section 43 or 45; and
  - (ii) for the purposes of, or in connection with, the performance of the entrusted investigating official’s duties;
- (h) if the entrusted investigating official is the Chief Executive Officer of Customs—the disclosure is in connection with giving a customs officer access to information for the purposes of, or in connection with, the performance of the customs officer’s duties;
- (i) if the entrusted investigating official is the Integrity Commissioner—the disclosure is in connection with giving an Australian Commission for Law Enforcement Integrity officer access to information for the purposes of, or in connection with, the performance of the Australian Commission for Law Enforcement Integrity officer’s duties;
- (j) the disclosure is in connection with giving another entrusted investigating official access to information for the purposes of, or in connection with, the performance of the other official’s duties.

### *Section three –Access to AUSTRAC information under Part 11 of the AML/CTF Act*

32 The analysis and disclosure of AUSTRAC information is consistent with the functions of the AUSTRAC CEO set out in section 212 of the AML/CTF Act, in particular paragraphs 212 (1)(a) and (b) which are as follows:

- a) to retain, compile, analyse and disseminate eligible collected information; and
- b) to provide advice and assistance, in relation to AUSTRAC information, to the persons and agencies who are entitled or authorised to access AUSTRAC information under Part 11;

33 Much of the information collected by the AUSTRAC CEO contains personal information. Personal information in the hands of the AUSTRAC CEO is protected by the provisions of the *Privacy Act 1988* (**Privacy Act**). Disclosure of AUSTRAC information under the respective provisions of the AML/CTF Act does not constitute a breach of the Privacy Act as the information is released in accordance with Australian Privacy Principle (**APP**) 6.2(b). APP 6.2(b) provides an exception to the general prohibition on the disclosure of personal information where the disclosure is required or authorised by or under an Australian law or a court or tribunal order. In the case of the disclosure of AUSTRAC information containing personal information the disclosure is authorised by the various provisions in Part 11 of the AML/CTF Act.

## Access to and disclosure of AUSTRAC information by the ATO

- 34 Part 11 Division 4 of the AML/CTF Act provides for access to AUSTRAC information by certain government agencies.
- 35 The Australian Taxation Office (ATO) is not a designated agency, as defined in section 5 of the AML/CTF Act, and has direct access to AUSTRAC information under section 125 of the AML/CTF Act. Section 125 permits the Commissioner of Taxation and any taxation officer to access AUSTRAC information 'for any purpose relating to the facilitation of the administration or enforcement of a taxation law'.
- 36 AUSTRAC information, once accessed by the Commissioner of Taxation or a taxation officer, is subject to the secrecy provisions set out in section 3C of the Taxation Administration Act 1953 (TAA), and must be dealt with in accordance with those provisions (subsection 125(3) of the AML/CTF Act). However, section 3C of the TAA does not prevent the Commissioner of Taxation or a taxation officer disclosing AUSTRAC information to an official of a designated agency for the purposes of or in connection with the performance of the official's duties in relation to the designated agency, so long as the official holds an appropriate authorisation under subsection 126(1) of the AML/CTF Act (subsection 125(4) of the AML/CTF Act).
- 37 Any official of a designated agency may disclose AUSTRAC information to the Commissioner of Taxation or a taxation officer (subsection 125(2) of the AML/CTF Act).

## Access to and disclosure of AUSTRAC information by designated agencies

- 38 Other government agencies are permitted to access AUSTRAC information under the provisions relating to 'designated agencies' provided for in sections 126, 127 and 128.
- 39 Section 5 of the AML/CTF Act defines 'designated agency':

***designated agency*** means:

- (a) the Australian Crime Commission; or
- (b) ASIO; or
- (c) the Australian Commission for Law Enforcement Integrity; or
- (d) the Australian Competition and Consumer Commission; or
- (e) Customs; or
- (f) the Australian Federal Police; or
- (g) the Australian Prudential Regulation Authority; or
- (ga) ASIS; or
- (gb) AGO; or
- (gc) DIO; or
- (gd) ASD; or
- (ge) ONA; or
- (h) the Australian Securities and Investments Commission; or
- (ha) the Clean Energy Regulator; or
- (hb) the Attorney-General's Department; or
- (i) the Human Services Department; or
- (k) a Commonwealth Royal Commission whose terms of reference include inquiry into whether unlawful conduct (however described) has, or might have, occurred; or
- (ka) the Department of Foreign Affairs and Trade; or
- (l) the Immigration Department; or

- (m) IGIS; or
- (n) the Treasury Department; or
- (o) an authority or agency of the Commonwealth, where the authority or agency is specified in the regulations; or
- (p) the police force or police service of a State or the Northern Territory; or
- (q) the New South Wales Crime Commission; or
- (r) the Independent Commission Against Corruption of New South Wales; or
- (s) the Police Integrity Commission of New South Wales; or
- (sa) the Independent Broad-based Anti-corruption Commission of Victoria; or
- (t) the Crime and Corruption Commission of Queensland; or
- (u) the Corruption and Crime Commission of Western Australia; or
- (ua) the Integrity Commission of Tasmania; or
- (v) an authority or agency of a State or Territory, where the authority or agency has the responsibility of collecting or receiving taxation revenue of the State or Territory; or
- (w) a State/Territory Royal Commission:
  - (i) whose terms of reference include inquiry into whether unlawful conduct (however described) has, or might have, occurred; and
  - (ii) that is specified in the regulations; or
- (x) an authority or agency of a State or Territory, where the authority or agency is specified in the regulations.

40 No regulations have been made under paragraphs (o) or (x) of the definition of designated

41 Under subsection 126(1) the AUSTRAC CEO may authorise specified officials, or a specified class of officials, of a specified designated agency to be given access to AUSTRAC information ‘for the purposes of performing the agency’s functions and exercising the agency’s powers.’ Such an authorisation must also state the AUSTRAC information, or class of AUSTRAC information, to which the officials of the designated agency are to have access.

42 Subsection 126(3) provides that the AUSTRAC CEO may only authorise access for specified State and Territory designated agencies (listed in paragraphs (p) to (x) of the definition) if the agency undertakes that it and its officials will comply with the APPs of section 14 and Schedule 1 of the Privacy Act. Therefore, designated agencies listed in paragraphs (p) to (x) of the definition of designated agency in section 5 need to provide an undertaking to the AUSTRAC CEO that the agency and its officials will comply with the APPs in respect to AUSTRAC information obtained under the authorisation or under subsection 128(2) of the AML/CTF Act.

43 The Treasury Department can only access AUSTRAC information in relation to performing regulatory duties under the *Foreign Acquisitions and Takeovers Act 1975* (subsection 126 (5)).

## Dealings with AUSTRAC information once accessed

44 Section 127 of the AML/CTF Act restricts what an official (or former official) of a designated agency, called the entrusted agency official, may do with ‘accessed information’.<sup>1</sup> An entrusted agency official may disclose such information if the disclosure

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<sup>1</sup> Subsection 127(4) provides that ‘accessed information’ is AUSTRAC information obtained by the entrusted agency official under paragraph 121(3)(da), subsection 125(4), section 126, subsection 128(1) or (2), subsection 132(2), (4), (5) or (7), subsection 133(2) or 133A(2) or section 133B or 133C

is for the performance of the official's duties or is authorised by, or is in connection with, communicating AUSTRAC information under subsection 125(2) or sections 128, 132, 133, 133A, 133B or 133C of the AML/CTF Act.

### **When AUSTRAC information can be passed on by an official of a designated agency**

- 45 Section 128 sets out the various circumstances when an official of a designated agency can pass on AUSTRAC information to another person. The term 'official of a designated agency' is relevantly defined in section 22 of the AML/CTF Act to include the CEO of the agency, a member of the agency or staff of the agency, an officer or employee of the agency, a person who is an examiner of the Australian Crime Commission (**ACC**) and a legal practitioner (however described) appointed to assist a Royal Commission. The full text of section 22 of the AML/CTF Act is to be found in the Legislation Attachment.
- 46 Once AUSTRAC information has been accessed by an authorised official of a designated agency, subsection 128(1) provides that it may be disclosed to another official in the same agency for the purposes of, or in connection with, the performance of the other official's duties in relation to the agency.
- 47 AUSTRAC information can also be passed onto another official at another designated agency for the purposes of performing the official's duties, if that official has been appropriately authorised to access the information under subsection 126(1) for the purpose of performing official duties (section 128(2)).
- 48 The decision on whether disclosure is for the purposes of or in connection with the performance of the official's duties is one to be made by the official of the respective designated agency proposing to make the disclosure on the facts and circumstances of each case.
- 49 Subsection 125(2) provides that AUSTRAC information can be passed on by a designated agency to the ATO.

### **Disclosure for obtaining legal advice, or for court or tribunal proceedings**

- 50 Subsection 128(3) provides that an official of a designated agency can disclose AUSTRAC information to a person for the purposes of, or in connection with, obtaining legal advice, court or tribunal proceedings (or proposed or possible proceedings). Paragraph 128(3)(b) also provides that an agency official can disclose AUSTRAC information in the course of court or tribunal proceedings.
- 51 However, it should be noted that under subsection 128(4), an agency official is not permitted to disclose information obtained under section 41 (suspicious matter reports) or 49 (further information obtained in relation to a suspect matter report, threshold transaction report or international funds transfer instruction), in so far as the information relates to a communication under section 41, under the provisions of subsection 128(3).
- 52 Subsections 128(5) to (7) provide that a person to whom information has been provided under paragraph 128(3)(a) must not disclose that information to another person, unless the disclosure is in connection with court or tribunal proceedings, proposed or possible court or tribunal proceedings or the obtaining or giving of legal advice, and to do otherwise is an offence.

## Disclosure for investigations

- 53 Subsection 128(8) permits an official of a designated agency to disclose AUSTRAC information, other than information obtained under section 41 or 49, in so far as the information relates to a communication under section 41, to a person in relation to an investigation or proposed or possible investigation. It is not specified that the official must have been involved in the investigation or that the investigation was under the law administered by the designated agency.
- 54 Subsections 128(10) and (11) provide that a person to whom information has been provided under subsection 128(8) must not disclose that information to another person, unless the disclosure is for the purposes of the investigation or proposed or possible investigation, court or tribunal proceedings, or proposed or possible court or tribunal proceedings connected with the investigation or proposed or possible investigation, and to do otherwise is an offence.
- 55 The decision whether to disclose under subsection 128(8) is one to be made by each designated agency considering release under the subsection. A designated agency considering disclosure will need to make its own assessment of whether the disclosure is in connection with an investigation or a proposed or possible investigation.

## Specific disclosure provisions for specified agencies

- 56 As can be seen from the above commentary, officials of designated agencies have general powers of disclosure of AUSTRAC information. Officials of specified designated agencies have particular disclosure provisions which are agency specific and set out in section 128 of the AML/CTF Act. Set out below is commentary about those agency specific disclosure provisions. In each of the specific disclosure provisions set out below, the disclosure by the specified agency can only occur in circumstances where the official of the specified agency is satisfied that the disclosure is for the purpose of, or in connection with, the performance of the official's duties in relation to employment with the specified agency.
- 57 Where these words are used in the respective provisions, the decision on whether disclosure is for the purposes of or in connection with the performance of the official's duties is one to be made by the official of the respective designated agency having regard to the facts and circumstances of each case.

## Australian Secret Intelligence Service (ASIS)

- 58 Subsection 128(12A) provides that an ASIS official may disclose AUSTRAC information to an official of the Inspector-General of Intelligence and Security where that disclosure is for the purposes of or in connection with the performance of the official's duties in relation to employment with ASIS. An ASIS official may also disclose AUSTRAC information to the ASIS Minister for the purposes of or in connection with the Minister's responsibilities and to a Minister who has power under section 9A of the *Intelligence Services Act 2001* to issue an authorisation in relation to ASIS and the disclosure is for the purposes of or in connection with that power.

## Australian Security Intelligence Organisation (ASIO)

- 59 Subsection 128(13) provides that an ASIO official may disclose AUSTRAC information to an official of the Inspector-General of Intelligence and Security where that disclosure is for the purposes of, or in connection with, the performance of the official's duties in relation to employment with ASIO. An ASIO official may also disclose AUSTRAC information to the ASIO Minister for the purposes of or in connection with the Minister's responsibilities.
- 60 Subsection 128(13) also provides that ASIO officials can disclose AUSTRAC information to the Minister administering the *Telecommunications (Interception and Access) Act 1979* where the disclosure is for the purposes of or in connection with the performance of the Minister's functions under that Act and to a Minister who has power under section 9A of the *Intelligence Services Act 2001* to issue an authorisation in relation to ASIS and the disclosure is for the purposes of or in connection with that power.

## Defence intelligence officials

- 61 Subsection 128(13B) provides that an official of a defence intelligence agency may disclose AUSTRAC information to an official of the Inspector-General of Intelligence and Security where that disclosure is for the purposes of, or in connection with, the performance of the official's duties in relation to employment with the defence intelligence agency. A defence intelligence official may also disclose AUSTRAC information to the Defence Minister for the purposes of or in connection with the Minister's responsibilities.
- 62 Subsection 128(13B) also provides that defence intelligence officials may disclose AUSTRAC information to the Minister administering the *Telecommunications (Interception and Access) Act 1979* where the disclosure is for the purposes of or in connection with the performance of the Minister's functions under that Act and to a Minister who has power under section 9A of the *Intelligence Services Act 2001* to issue an authorisation in relation to AGO or ASD and the disclosure is for the purposes of or in connection with that power.

## ONA officials

- 63 Subsection 128(13C) provides that an ONA official may disclose AUSTRAC information to an official of the Inspector-General of Intelligence and Security where that disclosure is for the purposes of, or in connection with, the performance of the official's duties in relation to employment with the ONA.
- 64 An ONA official may also disclose AUSTRAC information to the Minister administering the *Telecommunications (Interception and Access) Act 1979* where the disclosure is for the purposes of or in connection with the performance of the Minister's functions under that Act.
- 65 Subsection 128(13B) also provides that an ONA official may disclose AUSTRAC information to the Prime Minister where the disclosure is for the purposes of or in connection with the performance of the Prime Minister's responsibilities in relation to ONA.

## **Australian Crime Commission (ACC)**

- 66 Paragraphs 128(14)(a) to (d) contain additional specific provisions outlining when AUSTRAC information can be communicated or disclosed by specified officials of the ACC to members of the Board of the ACC, an Inter-Governmental Committee in a report by the Chair under subsection 59(4) of the *Australian Crime Commission Act 2002* and to a Parliamentary Joint Committee on the Australian Crime Commission under subsection 59(6A) of the *Australian Crime Commission Act 2002*.
- 67 Paragraph 128(14)(e) provides that an examiner of the ACC may disclose AUSTRAC information in the course of an examination before the examiner.
- 68 Paragraph 128(14)(f) provides that a member of staff of the ACC may disclose AUSTRAC information for the purposes of, or in connection with, the performance of the staff members' duties in relation to the ACC.

## **Responsible ministers**

- 69 Subsections 128(15) to (18) provide that designated Commonwealth agencies and designated State and Territory agencies can pass on AUSTRAC information to the relevant Minister for performance of Ministerial duties, in relation to that agency.

## **Inspector-General of Intelligence and Security (IGIS)**

- 70 Under subsection 128(19) AUSTRAC information may be disclosed by an IGIS official
- to another official of IGIS where the disclosure is for the purposes of, or in connection with, the performance of the official's duties in relation to ASIS, ASIO, a defence intelligence agency, ONA or any other Commonwealth agency (within the meaning of *Inspector-General of Intelligence and Security Act 1986 (IGIS Act)* or their employees;
  - in a report or draft report under Division 4 of the IGIS Act;
  - under section 23 of the IGIS Act or in a notice
  - in a notice under section 12 of the IGIS Act.

## **Access by non-designated Commonwealth agencies to AUSTRAC information**

- 71 Under section 129 of the AML/CTF Act the AUSTRAC CEO, may in writing, authorise access to AUSTRAC information to non-designated Commonwealth agencies, upon their written request, if the purposes of the access is for the:
- investigation of a possible breach of a law of the Commonwealth, or
  - proposed investigation into a possible breach of a law of the Commonwealth.
- 72 The authorisation must state the AUSTRAC information or the class of information. This information cannot be disclosed except for the purposes of the investigation. This information can then be disclosed to another official of that agency in relation to that investigation and in connection with a court or tribunal proceeding in relation to that investigation (section 131). Any third person receiving this AUSTRAC information cannot

pass it on – unless it is for the purposes of the court or tribunal proceedings in relation to that investigation (subsections 131(4) and (5)).

## Communication of AUSTRAC information to a foreign country

73 Section 132 sets out when AUSTRAC information can be disclosed to a foreign country by the AUSTRAC CEO, the Commissioner of the Australian Federal Police or the CEO of the ACC.

74 Foreign country is defined in section 5 of the AML/CTF Act in the following terms:

**foreign country** includes a region where:

- a) the region is a colony, territory or protectorate of a foreign country; or
- b) the region is part of a foreign country; or
- c) the region is under the protection of a foreign country; or
- d) a foreign country exercises jurisdiction or control over the region; or
- e) a foreign country is responsible for the region's international relations.

75 AUSTRAC considers that the definition of foreign country is quite broad. The Replacement Explanatory Memorandum to the *Anti-Money Laundering and Counter-Terrorism Financing Bill 2006* confirms this view of the definition of 'foreign country' and is as follows:

**Foreign country-** this definition extends the meaning of the term foreign country to include parts of countries, colonies, territories, protectorates, regions under protection, jurisdiction or control of a foreign country or a region whose international relations are the responsibility of a foreign country.

76 Subsection 132(1) of the AML/CTF Act deals specifically with communication by the AUSTRAC CEO of AUSTRAC information to foreign countries. The subsection provides that the AUSTRAC CEO may communicate AUSTRAC information to the government of a foreign country where the CEO is satisfied that the foreign country has given an appropriate undertaking to protect the confidentiality of the information, to control the use that would be made of the information and that it will be used only for the purpose for which it is communicated, and that it is appropriate in all the circumstances to communicate the information to the government of the foreign country.

77 Subsections 132(3) and (4) authorises the Commissioner of the Australian Federal Police (**AFP**), where the Commissioner is authorised to do so by the AUSTRAC CEO under subsection 132(2), and a member of the AFP authorised in writing by the Commissioner respectively, to communicate information to a foreign law enforcement agency, if the Commissioner is satisfied that the foreign law enforcement agency has given undertakings similar to those set out in paragraph 76 in relation to the confidentiality, control of use and use only for the purpose that the information has been communicated, to the foreign law enforcement agency.

78 There are similar provisions, to those applying in relation to the Commissioner of the AFP, set out in subsections 132(5), (6) and (7) that apply to the CEO of the ACC and a member of staff of the ACC.

79 Sections 133, 133A, 133B and 133C set out specific provisions enabling the Director-General of Security, the Director-General of ASIS, the Director of a defence intelligence agency and the Director-General of ONA, or staff of the agencies authorised in writing by them, to communicate AUSTRAC information to foreign intelligence agencies. The information may only be communicated if the Director-General is satisfied that the foreign intelligence agency has given appropriate undertakings to protect the confidentiality of the information, control the use that will be made of the information, and ensure that the information will only be used for the purpose for which it has been communicated to the foreign country.

### **Disclosure to courts or tribunals**

80 Section 134 provides that a person who obtains AUSTRAC information is not to be required:

- a) to produce in a court or tribunal a document containing AUSTRAC information; or
- b) to disclose to any court or tribunal any AUSTRAC information

except where it is necessary to do so for the purposes of carrying into effect the purposes of this Act or the *Financial Transaction Reports Act 1988*.

81 Section 134 is a general provision applying to persons that have accessed or have been given AUSTRAC information, which provides that those persons cannot be required to produce or to disclose to a court or tribunal, AUSTRAC information. The provisions has the effect that a person who has AUSTRAC information cannot be required by subpoena to disclose or produce AUSTRAC information to a court. As this is a general provision it will not override the specific provision in subsection 121(4) which provides that an entrusted public official is not to be required to produce or disclose AUSTRAC information to a court or Tribunal unless it is necessary to do so for the purposes of the AML/CTF Act or the FTR Act.

### **Disclosure under the *Freedom of Information Act 1982***

82 AUSTRAC information is subject to the provisions of the *Freedom of Information Act 1982 (FOI Act)*. Where an application is made under the provisions of the FOI Act for access to documents that request will be processed in accordance with the provisions of the FOI Act. The principles of the FOI Act will be applied and documents will be released unless the documents are exempt by virtue of one of the exemption provisions contained in the FOI Act.

83 If a decision is made to release documents under the FOI Act, then the release of the documents is authorised by section 18 of the FOI Act, which provides that where a request has been made, and any charges have been paid, access is to be given in accordance with the FOI Act, that is, access is to be given subject to the documents concerned being exempt documents under the FOI Act.

84 Where documents are released under the provisions of the FOI Act the prohibitions on disclosure of AUSTRAC information will not apply. The person disclosing the information will not be guilty of an offence due to the operation of section 92 of the FOI Act, which provides that where access has been given to a document under the FOI Act neither the

person authorising the access nor any person concerned in the giving of the access is guilty of a criminal offence by reason only of the authorising or giving access.

## Suspect transaction reports and suspicious matter reports and the FOI Act

85 Subsection 7(2) of the FOI Act states:

The persons, bodies and Departments specified in Part II of Schedule 2 are exempt from the operation of this Act in relation to the documents referred to in that Schedule in relation to them.

86 Schedule 2, Part II of the FOI Act includes the following:

Australian Transaction Reports and Analysis Centre, in relation to documents concerning information communicated to it under section 16 of the *Financial Transaction Reports Act 1988* or section 41 or 49 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

87 By operation of subsection 7(2) of the FOI Act, any AUSTRAC documents which contain information communicated under section 16 (suspect transaction reports) of the FTR Act or section 41 (suspicious matter reports) or 49 (further information requested in relation to reports under sections 41, 43 or 45) of the AML/CTF Act, are therefore exempt from the operation of the FOI Act. This means that AUSTRAC is not required to produce such documents to an applicant.

## Related information

- [\*Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 \(No. 1\) \(AML/CTF Rules\)\*](#)

## Relevant legislation

- [Chapter 22 – Officials of designated agencies etc.](#)
- [Part 11, Division 2 - Secrecy](#)
- [Part 11, Division 3 - Disclosure of information](#)
- [Part 11, Division 4 - Access to AUSTRAC information by agencies](#)
- [Part 11, Division 5 - Use of AUSTRAC information in court or tribunal proceedings](#)

## Further Information

### *Privacy Act 1988*

Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the *Privacy Act 1988*, including the requirement to comply with the Australian Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to the [Office of the Australian Information Commissioner website](#) or call 1300 363 992.

### *AUSTRAC Contact Centre*

AUSTRAC officers are able to assist reporting entities, their staff and the public in providing general information relating to the AML/CTF Act. Enquiries can be directed to the AUSTRAC Contact Centre via:

- email to [help\\_desk@austrac.gov.au](mailto:help_desk@austrac.gov.au)
- telephone 02 9950 0827 or 1300 021 037 (a local call within Australia).

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